

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PROFESSOR LAURA BENY,

Plaintiff,

vs.

Case No. 2:22-cv-12021-DML-EAS
Hon. David M. Lawson

UNIVERSITY OF MICHIGAN,

UNIVERSITY OF MICHIGAN
LAW SCHOOL, and
DEAN MARK D. WEST,

(Individually and Professional
Capacity),

Defendants.

**LOCAL RULE CERTIFICATION
CERTIFICATE OF SERVICE
PLAINTIFF'S RESPONSE AND
BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION TO STAY
PROCEEDINGS PENDING
RESOLUTION OF DEFENDANTS'
MOTION TO DISMISS**

Alice B. Jennings (P29064)
Carl R. Edwards (P24952)
EDWARDS & JENNINGS, P.C.
Attorneys for Plaintiff
ajennings@edwardjennings.com
cedwards@edwardsjennings.com

Brian M. Schwartz (P69018)
MILLER CANFIELD
Attorney for Defendants
schwartz@millercanfield.com

Andrew J. Clopton (P80315)
Amanda K. Rice (P80460)
JONES DAY
Attorneys for Defendants
aclopton@jonesday.com
arice@jonesday.com

Matthew E. Papez
JONES DAY
Attorney for Defendants
mpapez@jonesday.com

Jack M. Williams
JONES DAY
Attorney for Defendants
jmwilliams@jonesday.com

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arice@jonesday.com

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JONES DAY
Attorney for Defendants
mpapez@jonesday.com

Jack M. Williams
JONES DAY
Attorney for Defendants
jmwilliams@jonesday.com

LOCAL RULE CERTIFICATION

Dated: December 27, 2022

I, Alice B. Jennings, certify that this document complies with Local Rule 5.1(a), including: double-spaced (except for quoted materials and footnotes); at least one inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10 ½ characters per inch (for non-proportional fonts) or 14 point (for proportional fonts). I also certify that it is the appropriate length. Local Rule 7.1(d)(3).

/s/ Alice B. Jennings
Alice B. Jennings (P29064)

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Attorney for Defendants
mpapez@jonesday.com

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JONES DAY
Attorney for Defendants
jmwilliams@jonesday.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the following documents were served, via E-filing, on the attorneys of record of all parties, as disclosed by the pleadings of the record herein, on December 27, 2022:

- Local Rule Certification
- Certificate of Service
- Plaintiff's Response in Opposition to Defendants' Motion to Stay Proceedings Pending Resolution of Defendants' Motion to Dismiss
- Plaintiff's Brief in Opposition to Defendants' Motion to Stay Proceedings Pending Resolution of Defendants' Motion to Dismiss

/s/ Alice B. Jennings

Alice B. Jennings (P29064)

TABLE OF CONTENTS

Controlling or Most Appropriate Authorities ii

Table of Authorities..... iii

Statement of Issues Presented iv

Index of Exhibits v

I. Introduction 2

II. Argument 3

A. Defendants’ Request For A Stay Should Not Be Granted Where
Plaintiff’s Motion To File A First Amended Complaint Will Not
Implicate Sovereign Immunity Or Qualified Immunity Defenses
By Defendants 3

III. Conclusion..... 3

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Williams v Univ. of Mich., 2022 US Dist LEXIS 203712; 2022 WL 16796741

Tyrrell v Univ. of Mich., 355 Mich App 254; 966 NW2d 219; 2020 Mich App LEXIS 8567

TABLE OF AUTHORITIES

Cases

Williams v Univ. of Mich.,
2022 US Dist LEXIS 203712; 2022 WL 16796741 2

Tyrrell v Univ. of Mich.,
355 Mich App 254; 966 NW2d 219; 2020 Mich App LEXIS 8567 2

STATEMENT OF ISSUES PRESENTED

1. Should The Trial Court Stay Plaintiff's Complaint For Discovery Purposes Prior To The Court Ruling On Defendants' Motion for Summary Disposition?

Plaintiff says: NO
Defendant says: YES
This Court Should Say: NO

INDEX OF EXHIBITS

- | | |
|-----------|--|
| Exhibit 1 | <i>Williams v Univ. of Mich.</i> , 2022 US Dist LEXIS 203712; 2022 WL 16796741 |
| Exhibit 2 | <i>Tyrrell v Univ. of Mich.</i> , 355 Mich App 254; 966 NW2d 219; 2020 Mich App LEXIS 8567 |
| Exhibit 3 | Plaintiff's Complaint |

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EDWARDS & JENNINGS, P.C.
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**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS'
MOTION TO STAY FURTHER PROCEEDINGS PENDING RESOLUTION
OF DEFENDANTS' MOTION TO DISMISS**

NOW COMES Plaintiff, PROFESSOR LAURA BENY, by and through her attorneys, Edwards & Jennings, P.C., by Carl R. Edwards and Alice B. Jennings, and for her Response to Defendants' Motion to Stay Further Proceedings Pending Resolution of Defendants' Motion to Dismiss, states and follows:

1. This is a civil right Complaint filed by Professor Laura Beny, a female African American tenured professor, since 2008, and a professor since 2003 at the University of Michigan Law School.

2. In a communication dated December 11, 2022, Brian Schwartz, attorney for University of Michigan and U of M Law School, requested a concurrence from Plaintiff to stay the case to enable the Defendants to appeal the trial court's ruling, presumably allowing discovery prior to Plaintiff filing a First Amended Complaint.

3. On December 11 and 12, 2022, Plaintiff's counsel, by email, advised Defendants' counsel that he would have to review the cases prior to any decision on concurrence.

4. Defendants' counsel sent four (4) cases on December 12, 2022 and filed Defendants' Motion to Stay Further Proceedings Pending Resolution of Defendants' Motion to Dismiss.

5. Plaintiff intends to file, within ten (10) days from the filing of this instant Response to Defendants' Motion to Stay, a First Amended Complaint removing all counts which implicate sovereign/governmental immunity, or qualified immunity. *Williams v Univ. of Mich.*, 2022 US Dist LEXIS 203712 (pp. 7 and 8 of 17 attached); 2022 WL 16796741 (Ex. 1); citing *Tyrrell v Univ. of Mich.*, 355 Mich App 254; 966 NW2d 219; 2020 Mich App LEXIS 8567 (Ex. 2).

6. Plaintiff cannot concur to Defendants' Request for Stay for the reasons stated above.

WHEREFORE, the Plaintiff requests that the Court deny Defendants' Motion to Dismiss based on governmental immunity and/or qualified immunity.

Respectfully submitted,

EDWARDS & JENNINGS, P.C.

By: /s/ Alice B. Jennings
Alice B. Jennings (P29064)
Carl R. Edwards (P24952)
Attorneys for Plaintiff
3031 West Grand Boulevard, Ste. 435
Detroit, MI 48292
(313) 961-5000
ajennings@edwardsjennings.com

Dated: December 27, 2022

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EDWARDS & JENNINGS, P.C.
Attorneys for Plaintiff
ajennings@edwardjennings.com
cedwards@edwardsjennings.com

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MILLER CANFIELD
Attorney for Defendants
schwartz@millercanfield.com

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**PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO
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I. INTRODUCTION

A. Pertinent Statement Of Facts

Plaintiff, in her Response to Defendants' Motion to Stay states that Plaintiff will file a Motion to file a First Amended Complaint, on or before ten (10) days from the date of Plaintiff's Response, removing all counts that implicate the Defendants' defenses of sovereign immunity and qualified immunity.

While Defendants state that Plaintiff is not harmed by an appeal to the Sixth Circuit Court of Appeals, Defendant ignores the harm that Defendant West, as Dean of the University of Michigan's Law School, has subjected Plaintiff, including not being allowed to teach any of her classes; not advising students; and stopping all raises to her salary and other economic loss, past and future.

"Accordingly, for the period beginning today and ending June 30, 2027, you are not eligible for salary increases, summer funding, Wolfson funds, Cook funds, or any type of discretionary leave, including sabbaticals, mid-sabbatical, or Elle's leaves. Your salary after that date will not return to that of your cohort." (Ex. 3, Plaintiff's Complaint, ¶97, pp. 41-42.)

To date, Plaintiff has not been returned to her full duties as a tenure faculty member with the terms and conditions reinstated to the classroom teaching and other

service and/or committee requirements; nor has Plaintiff been given a date to return to her full duties.

II. ARGUMENT

A. Defendants' Request For A Stay Should Not Be Granted Where Plaintiff's Motion To File A First Amended Complaint Will Not Implicate Sovereign Immunity Or Qualified Immunity Defenses By Defendants

Defendants' Brief focused around sovereign immunity and qualified immunity defenses. (See Defendants' "Statement Of Issues Presented.")

Plaintiff has stated her intention to file a First Amended Complaint which will not implicate the Defendants' governmental immunity defenses. Therefore a stay is not required. *Williams v Univ. of Mich.*, 2022 US Dist LEXIS 203712 (pp. 7 and 8 of 17 attached); 2022 WL 16796741 (**Ex. 1**); citing *Tyrrell v Univ. of Mich.*, 355 Mich App 254; 966 NW2d 219; 2020 Mich App LEXIS 8567 (**Ex. 2**).

III. CONCLUSUION

Whereas here, a stay will not be required, assuming the Court grants Plaintiff's Motion to file a First Amended Complaint, Defendants' Motion to Stay Further Proceedings should be denied.

Respectfully submitted,
EDWARDS & JENNINGS, P.C.

By: /s/ Alice B. Jennings

Alice B. Jennings (P29064)

Carl R. Edwards (P24952)

Attorneys for Plaintiff

ajennings@edwardsjennings.com

Dated: December 27, 2022